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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/879,840	06/12/2001	Robert M. English	103.1071.01	3690
22883	7590	03/09/2005	EXAMINER	
SWERNOFSKY LAW GROUP PC P.O. BOX 390013 MOUNTAIN VIEW, CA 94039-0013			PATEL, NIKETA I	
		ART UNIT	PAPER NUMBER	
		2182		

DATE MAILED: 03/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/879,840	ENGLISH ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Niketa I. Patel	2182	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 12 June 2001.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-23 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-8, 11-18 and 21 is/are rejected.  
 7) Claim(s) 9, 10, 19, 20, 22 and 23 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 12 June 2001 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>8/30/01</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION**

***Information Disclosure Statement***

1. The information disclosure statement filed 08/30/2001 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because English language translation is not provided for the foreign patent document number: 694 25 658. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609 ¶ C(1).

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

3. Claims 4 and 17 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point

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out and distinctly claim the subject matter which applicant regards as the invention.

4. The term "**substantially unchanged**" in claims 4 and 17 is a relative term, which renders the claim indefinite. The term "**substantially**" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) The invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. As far as the Examiner can interpret the claims in light of the claims 1-8, 11-18 and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by O'Toole et al. U.S. Patent Number 6,757,723 B1 (hereinafter "O'Toole".)

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7. **Referring to claims 1, 11, 15,** O'Toole teaches including at a first device [see column 4, lines 62-67, column 5, lines 1-5, 21-25, 'SODA appliances 18'], reading a set of information, at least some of said information located relatively local to said first device and at least some of said information obtained from an information server relatively remote [see column 6, lines 50-55 and column 7, lines 19-40] from said first device, and setting values for at least one variable at said first device in response to said information [see column 7, lines 19-40, 'configuration table']; at a second device [see column 4, lines 62-67, column 5, lines 1-5, 21-25, 'SODA appliances 18'], reading a set of information, at least some of said information located relatively local to said second device and at least some of said information obtained from an information server relatively remote from said second device [see column 6, lines 50-55 and column 7, lines 19-40], and setting values for at least one variable at said second device in response to said information [see column 7, lines 19-40, 'configuration table']; wherein at least some of said information is common to both said first device and said second device [see column 7, lines 19-40 and column 12, lines 41-67, 'ownership data'.]

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8. **Referring to claims 2, 12,** O'Toole teaches wherein said information includes configuration information used at start-up by said first device [see column 7, lines 28-40.]

9. **Referring to claims 3, 13, 16,** O'Toole teaches recording said information at selected times for said first device [see column 23, lines 60-65]; at said first device, reading said recorded information in addition to said set of information [see column 23, lines 60-67 and column 24, lines 1-11]; and comparing said recorded information with at least some of said set of information [see column 23, lines 60-67 and column 24, lines 1-11 and column 22, lines 1-7.]

10. **Referring to claims 4, 14, 17,** O'Toole teaches wherein said comparison includes a set of resources from which said information can be obtained by said first device [see figure 3, elements 30,2,34,36] and including re-performing said operations of reading said set of information and setting values until said set of resources is substantially unchanged [see column 23, lines 60-67 and column 24, lines 1-11 and column 22, lines 1-7.]

11. **Referring to claim 5,** O'Toole teaches wherein said selected times include at each restart of said first device [see column 6, lines 50-55, 'boot algorithm'.]

12. **Referring to claims 6, 18, 21,** O'Toole teaches wherein said information includes a set of resources from which said

information can be obtained by said first device [see figure 3, elements 30,2,34,36,44.]

13. **Referring to claim 7,** O'Toole teaches wherein said set of resources includes at least a first file at a first said information server [see figure 3, elements 30,2,34,36] and a second file at a second information server [see figure 3, element 44 and column 5, lines 35-57.]

14. **Referring to claim 8,** O'Toole teaches wherein said set of resources includes at least one file at said information server [see figure 3, element 28.]

#### ***Allowable Subject Matter***

15. Claims 9-10, 19-20 and 22-23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

16. The following is a statement of reasons for the indication of allowable subject matter: the Prior Art cited taken alone or in combination with other fails to teach or suggest (a) resolving conflicts when said information assigns two inconsistent values to a single variable by determining a higher priority source and a lower priority source and (b) defining a relative priority for a first and a second information server in

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response to a relative position of the first and second information server in a sequence of locations.

***Conclusion***

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following documents have been made record of to further show the state of the art as it pertains to

Lal USPat.App.Pub#: 2002/0184572 A1

Lortz U.S. Patent Number: 6,505,243 B1

Beckmann et al. USPat.App.Pub#: 2002/0073088 A1

McCabe et al. USPat.App.Pub#: 2005/0027892 A1

Nixon et al. USPat.App.Pub#: 2003/0004952 A1

McCardle USPat.App.Pub#: 2004/0034763 A1

Cardoso, JR. USPat.App.Pub#: 2002/0184512 A1

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niketa I. Patel whose telephone number is (571) 272 4156. The examiner can normally be reached on M-F 8:00 A.M. to 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Gaffin can be reached on (571) 272 4146. The fax phone number for the

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organization where this application or proceeding is assigned is  
703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

NP  
03/04/2005



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